A

TRANSWATER TENAGA SDN BHD

v.

APS TECHNOLOGIES SDN BHD & ANOR

B

COURT OF APPEAL, PUTRAJAYA
MOKHTAR SIDIN JCA
AZMEL MAAMOR JCA
ZULKEFLI MAKINUDIN JCA
[CIVIL APPEAL NO: W-02-195-2004]

C

24 NOVEMBER 2006

CONTRACT: *Breach - Liability - Whether there was a binding contract between plaintiffs and defendant - Whether first plaintiff could sub-contract to defendant - Whether defendant induced breach of contract*

D *between second plaintiff and another party by contracting with that other party*

This was an appeal by the defendant (the appellant herein) against the decision of the trial judge who allowed the plaintiffs' (the

E respondents herein) claim against the defendant for breach of contract and wrongful inducement and procurement of breach of contract. The facts showed that the second plaintiff entered into an agreement with the Malaysian Airlines System (MAS) for Gas Reticulation System Works (GRSW) in respect of the Kuala

F Lumpur International Airport. The second plaintiff then sub-contracted the construction of a Gas Metering Station ('GMS'), which formed part of the GRSW, to the first plaintiff. Subsequently, the second plaintiff approached the defendant to sub-contract the construction of the GMS to the defendant. Both

G parties went into negotiations for a few months and then the first plaintiff in place of the second plaintiff continued negotiations with the defendant. The defendant then had a private meeting with MAS without the knowledge of the plaintiffs and was awarded the GRSW project.

H The issues were: (1) whether the defendant and the plaintiff had a binding contract; (2) whether the first plaintiff was in a position to sub-contract the relevant GMS contract to the defendant; (3) whether the defendant induced a breach of contract between MAS and the second plaintiff; and (4) whether the defendant was

I denied an opportunity to call a material witness.

Held (dismissing the appeal)
Per Zulkefli Makinudin JCA:

(1) The facts showed that the defendant's offer of final quotation in a letter dated 14 January 1998 remained and that the first plaintiff had accepted the offer within the stipulated period. Therefore, a valid and binding contract was formed between the said parties. Further, the defendant had partly performed the GMS works evincing a legally binding contract existing between the said parties. (paras 14 & 15)

(2) MAS had compensated the second plaintiff for omitting the second plaintiff from the GRSW project. Therefore, there was no issue as to whether MAS had pre-qualified the first plaintiff. Besides, it was the GMS works that were sub-contracted to the first plaintiff and not the entire GRSW project. If the defendant knew that it would be the first plaintiff to award the GMS works then the chain of awarding the works was never broken and was legally sustainable. (para 18)

(3) The facts showed that the defendant induced a breach of contract between the second plaintiff and MAS for the GRSW project. The defendant and MAS had a meeting and negotiated covertly without the second plaintiff's knowledge for the GRSW project. This was even before the works were omitted from the second plaintiff and whilst the defendant was still negotiating with the first plaintiff on the GMS works which formed part of the GRSW project. Further, the defendant had submitted its tender for the GRSW project before it was omitted from the second plaintiff. Such actions had caused the GRSW project from being omitted from the second plaintiff and with MAS awarding it to the defendant. Therefore, the defendant's inducement had directly caused MAS to omit the said project from the second plaintiff. That had caused losses to the second plaintiff. (para 21)

(4) The defendant afforded no proper justification for the wrongful inducement. The allegation that the second plaintiff delayed the GRSW project was unfounded. The delay did not give the defendant the right to interfere. MAS had in fact granted the second plaintiff an extension of time to complete the project

A concerned. MAS also did not claim damages against the second plaintiff and had in fact paid compensation for actual works done and loss of profit. (para 23)

(5) The defendant was not denied the opportunity to call the B material witness from MAS. The evidence showed that it was the defendant who was not ready to call and make available the said material witness at that stage of the hearing before the trial judge. (paras 24 & 25)

C ***Bahasa Malaysia*** *translation of headnotes*

Ini adalah rayuan defendan (perayu di sini) terhadap keputusan hakim bicara kerana membenarkan tuntutan kemungkiran kontrak dan dorongan salah kemungkiran kontrak plaintif-plaintif (responden-responden di sini) terhadap defendan. Fakta D menunjukkan bahawa plaintif kedua telah memeterai satu perjanjian dengan Malaysian Airlines System (MAS) untuk projek Gas Reticulation System Works (GRSW) di Lapangan Terbang Antarabangsa Kuala Lumpur. Berikutnya, plaintif kedua telah mengkontrakkan pembinaan Gas Metering Station ('GMS'), yang E menjadi sebahagian GRSW, kepada plaintif pertama. Kemudian, plaintif kedua menemui defendan pula untuk mengkontrakkan pembinaan GMS kepada defendan. Pihak-pihak telah berunding untuk beberapa bulan dan selepas itu plaintif pertama mengganti plaintif kedua bagi meneruskan rundingan dengan defendan. F Defendan, bagaimanapun, telah berunding secara sulit dengan MAS tanpa pengetahuan plaintif-plaintif, dan telah diawardkan projek GRSW tersebut.

Isu-isunya adalah: (1) sama ada defendan dan plaintif-plaintif telah G memeterai kontrak yang mengikat; (2) sama ada plaintif pertama boleh mengkontrakkan kontrak GMS kepada defendan; (3) sama ada defendan telah mendorong kemungkiran kontrak di antara MAS dan plaintif kedua; dan (4) sama ada defendan dinafikan peluang untuk memanggil saksi material.

H **Diputuskan (menolak rayuan)**
Oleh Zulkefli Makinudin JCA:

(1) Fakta menunjukkan bahawa tawaran kuotasi akhir defendan melalui surat bertarikh 14 Januari 1998 masih terpakai dan I plaintif pertama telah menerima tawaran tersebut dalam masa yang ditetapkan. Oleh itu, suatu kontrak yang sah dan mengikat telah dimeterai oleh pihak-pihak. Selain itu, defendan

telah melaksanakan sebahagian dari kerja-kerja GMS sekaligus menunjuk kepada kewujudan kontrak yang sah dan mengikat di antara pihak-pihak.

(2) MAS telah membayar pampasan kepada plaintif kedua kerana mengeluarkannya dari projek GRSW. Oleh itu, isu sama ada MAS telah 'pre-qualified' plaintif pertama tidak berbangkit. Lagipun, yang disub-kontrakkan kepada plaintif pertama adalah kerja-kerja GMS dan bukannya keseluruhan projek GRSW. Jika defendan tahu bahawa yang mengawardkan kerja-kerja GMS adalah plaintif pertama, maka rantaian pemberian kerja-kerja adalah tidak terputus dan boleh dipertahankan di sisi undang-undang.

(3) Fakta menunjukkan bahawa defendan telah mendorong kepada berlakunya kemungkiran kontrak di antara plaintif kedua dan MAS bagi projek GRSW. Defendan dan MAS telah bertemu dan telah berunding secara sulit mengenai projek GRSW tanpa pengetahuan plaintif kedua. Ini malah berlaku sebelum kerja-kerja ditarik balik dari plaintif kedua dan semasa defendan masih berunding dengan plaintif kedua berkaitan kerja-kerja GMS yang menjadi sebahagian dari projek GRSW. Selain itu, defendan telah mengemukakan tendernya bagi projek GRSW sebelum ianya ditarik balik dari plaintif kedua. Tindakan-tindakan sedemikian telah menyebabkan projek GRSW ditarik balik dari plaintif kedua dengan MAS mengawardkannya kepada defendan. Oleh itu, dorongan defendan telah secara langsung menyebabkan MAS menarik balik projek tersebut dari plaintif kedua. Ini menyebabkan kerugian kepada plaintif kedua.

(4) Defendan tidak memberi justifikasi kukuh mengenai dorongan berkenaan. Dakwaan bahawa plaintif kedua telah melengah-lengahkan projek GRSW adalah tidak berasas. Kelengahan tidak memberi defendan hak untuk campur tangan. MAS malah telah memberikan lanjutan masa kepada plaintif kedua untuk menyempurnakan projek tersebut. MAS juga tidak menuntut gantirugi terhadap plaintif kedua dan malah telah membayar pampasan bagi kerugian keuntungan dan terhadap kerja-kerja sebenar yang dilaksanakan.

(5) Defendan tidak dinafikan peluang untuk memanggil saksi material dari MAS. Keterangan menunjukkan bahawa pihak yang tidak bersedia dan gagal mengemukakan saksi material di peringkat perbicaraan di hadapan hakim bicara tersebut adalah defendan sendiri.

Case(s) referred to:

Greig v. Isole [1978] 3 All ER 449 ***(refd)***

Loh Holdings Sdn Bhd v. Peglin Development Sdn Bhd & Anor [1984] 2 CLJ 88; [1984] 1 CLJ 211 FC ***(refd)***

South Wales Miners' Federation & Others v. Glamorgan Coal Company Limited & Others [1905] AC 239 (HL) ***(refd)***

Stevenson, Jaques & Co v. McLean [1880] 5 QBD 346 ***(refd)***

For the appellants - Romesh Abraham (Katheleen Nunis with him); M/s Shook Lin & Bok

For the respondents - WM Chang (HL Chan with him); M/s Raja Darryl & Loh

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S1-22-761-2000]

Reported by Usha Thiagarajah

JUDGMENT

Zulkefli Makinudin JCA:

Introduction

[1] This is an appeal by the defendant against the decision of the learned judge of the High Court in allowing the first and the second plaintiffs' claims on the issue of liability against the defendant. The first plaintiff's claim against the defendant is for breach of contract. The second plaintiff's claim against the defendant is for damages for wrongful inducement and procurement of breach of contract. Having allowed the claims of the first and second plaintiffs with costs, the learned trial judge directed the senior assistant registrar to proceed to assess damages.

Background

[2] The relevant background facts of the case are as follows:

(1) The second plaintiff contended that it had entered into a contract with Malaysian Airlines System ("MAS") for the Gas Reticulation System Works ("GRSW") for the Kuala Lumpur International Airport. The second plaintiff also contended that they had sub-contracted the construction of the Gas Metering Station ("GMS") which formed part of the GRSW to the first plaintiff.

(2) Sometime in June 1997, the second plaintiff approached the defendant in order to sub-contract the construction of the GMS to the defendant.

(3) The defendant and the second plaintiff then went through a series of negotiations on the terms of the contract for the GMS over the period of June 1997 to December 1997. In December 1997, the first plaintiff in place of the second plaintiff continued with the negotiations with the defendant.

(4) The defendant and the first plaintiff were unable to come to an agreement on several material terms and in particular in relation to the contract sum and the terms of payment.

(5) In January 1998, the defendant informed the first plaintiff that the defendant was no longer interested in the contract for the construction of the GMS. Nevertheless the defendant alleged in view of the request by the first plaintiff, the defendant had agreed to furnish the first plaintiff with a final quotation for the GMS. The defendant forwarded its final quote in a letter dated 14 January 1998 to the first plaintiff with the condition that the first plaintiff was to respond to the same within a week of the date thereof (ie, on or before 21 January 1998).

(6) On or about 19 January 1998 there was a meeting between representatives of the first plaintiff, one Dato Perumal A. Pikiri (PW1) and the defendant regarding the negotiations for the GMS. The defendant alleged that at the said meeting, the first plaintiff's representative had specifically requested that the defendant "escalate" the contract price under their quotation of 14 January 1998.

(7) The defendant alleged that as it was not agreeable to such a price "escalation", a representative of the defendant, one Chung Loong Chye (DW1) thereafter spoke to the said Dato Perumal (PW1) of the first plaintiff on 20 January 1998 and informed him that the defendant would not escalate the contract price and was no longer interested in negotiating with the first plaintiff for the GMS.

(8) The defendant then issued a letter dated 21 January 1998 to the first plaintiff informing the first plaintiff of its above decision. The first plaintiff in the meanwhile also purported to send a letter dated 21 January 1998 to the defendant by facsimile seeking to accept the defendant's quotation of 14 January 1998.

(9) In response to the first plaintiff's letter dated 21 January 1998 the defendant issued a letter to the first plaintiff dated 22 January 1998 whereby the defendant confirmed that the defendant was no longer interested in the GMS and had withdrawn its quotation of 14 January 1998.

(10) On or about 26 January 1998, the defendant received an award for the GRSW from MAS.

Issues Before The Court

[3] The appeal herein is based substantially on two main issues which are as follows:

[4] Firstly, in relation to the first plaintiff the issue is whether there was a binding contract reached between the defendant and the first plaintiff in relation to the GMS either orally or in writing. It is the defendant's contention that the first plaintiff's letter of 21 January 1998 did not give rise to any contract. The learned trial judge made a finding that there was a binding contract which came into existence between the first plaintiff and the defendant on 21 January 1998.

[5] Secondly, in relation to the second plaintiff the issue is whether the learned High Court Judge was right in holding that the defendant had induced a breach of the alleged contract between the second plaintiff and MAS for the GRSW.

Whether There Was A Binding Contract Reached Between The Defendant And The First Plaintiff Either Orally Or In Writing

[6] It is the defendant's case that there was no contract concluded between the first plaintiff and the defendant. Learned counsel for the defendant in his argument before us submitted that the whole of the correspondence between the parties from June 1997 to January 1998 showed a series of negotiations and re-negotiations without any clear consensus on the essential terms of a contract. What was important was for the court to consider the whole of the correspondence and to decide if the parties had agreed on the same terms.

[7] The relevant question to be decided is whether the defendant's letter of 14 January 1998 was accepted by the first plaintiff and thereby constituted a valid and binding contract between the parties as held by the learned trial judge. In my view there is no dispute that the defendant's letter of 14 January 1998 was its offer to the first plaintiff with a validity period of one week from the date of the letter. There is no dispute that the first plaintiff's letter dated 21 January 1998 unconditionally accepted the defendant's offer of 14 January 1998. There is further no dispute that by its letter of 22 January 1998 the first plaintiff furnished a cheque of a sum of RM160,500 to the defendant for the 30% portion of the contract price as advance payment for the GMS works. (See p. 454-456 of appeal record (vol. 2)). This term was one of the terms offered by the defendant and accepted and acted upon by the first plaintiff. In this case what is in dispute is whether the defendant had revoked its offer of 14 January 1998 as a result of the following intervening events:

(i) the meeting on 19 January 1998 between the representatives of the first plaintiff and the defendant and the alleged telephone conversation between PW1 and DW1 on 20 January 1998; and

(ii) the defendant's letter of 21 January 1998 to the first plaintiff.

The first plaintiff's contention is that there is no revocation of the defendant's offer of 14 January 1998. The learned trial judge agreed with this contention and rejected the defendant's contention.

[8] The dispute centers on the defendant's allegation that the first plaintiff had requested the defendant to resubmit "an escalated quotation" on the contract price for the GMS. For the defendant it was argued that in a meeting on 19 January 1998 the first plaintiff had allegedly requested the defendant to submit an "escalated quote". The defendant allegedly declined to do so by its letter of 21 January 1998. It is the defendant's contention that the first plaintiff's request was treated as a counter-offer and by the said request the defendant's offer of 14 January 1998 was neutralized and was no longer capable of acceptance.

[9] On the evidence adduced before the learned trial judge I find that he was right in concluding that there was no request for the defendant to allegedly resubmit an "escalated quote". The learned trial judge was justified in stating that it makes no logical commercial sense for the first plaintiff to have asked the defendant to resubmit an escalated quotation. PWl's testimony was preferred in that an escalated quote from the defendant would have reduced the profit margin of the first plaintiff. The evidence given by PW1 in explanation that an escalated quote would reduce the profit margin of the first plaintiff was not challenged at cross-examination. There is also no other explanation proffered by defendant as to why the first plaintiff would want the defendant to escalate its quotation.

[10] It is also to be noted that the proposition to "escalate the quote" came about abruptly and at a time so close to the expiry of the defendant's offer of 14 January 1998. The plaintiffs and the defendant have been in negotiations since June 1997 onwards. It is my considered view that to request the defendant to suddenly "escalate its quote" two days before the expiry of the defendant's offer of 14 January 1998 and several months after they have been negotiating is illogical and highly improbable.

[11] The timing of the defendant's letter dated 21 January 1998 in the light of the undisputed events occurring at the same time would also appear to make the defendant's letter highly suspect. These undisputed events may be chronologically set out as follows:

(i) On 14 January 1998 the defendant made an offer to the first plaintiff by its letter of the same date. The letter had a validity period of one week.

(ii) On 19 January 1998 there was a meeting between the representatives of the first plaintiff and the defendant.

(iii) On 20 January 1998 at about 3pm the defendant met MAS to discuss MAS's intention to award the GRSW to the defendant. Neither plaintiffs were informed of the meeting whether before or after the event.

(iv) On 21 January 1998 the defendant promptly submitted its 5-page proposal for the GRSW at a price of RM2.5 million to MAS. The defendant was no doubt enticed by the whopping increase of income from RM535,000 (under a contract with the first plaintiff) to RM2.5 million (under a contract with MAS) *albeit* for a bigger scope of works.

(v) On 21 January 1998 when the defendant made the RM2.5 million offer to MAS, the first plaintiff wrote to accept the defendant's offer of 14 January 1998. On the same day the defendant also issued a letter to the first plaintiff declining to resubmit "an escalated quotation" which they submit tantamount to revoking their offer of 14 January 1998.

[12] I would venture to state that by the events that took place on 21 January 1998 whereby the defendant made their offer to MAS and receiving the first plaintiff's acceptance, the defendant realized that they could not contract with two persons for the same works. This prompted the defendant to despatch the letter declining to resubmit "an escalated quotation" and was an attempt to sever all ties with the first plaintiff The defendant submitted that the rejection by the defendant of the plaintiff's request to escalate the price quotation meant that the negotiations ceased and there was no contract.

[13] Assuming that there was a request by the first plaintiff to quote an escalated cost, by law it remained a request and not a counter-offer as proffered by the defendant. I find there is nothing specific by way of a counter-offer made but a mere request which cannot be treated as a rejection of the defendant's offer of 14 January 1998. In my view, in the context of this case, it may only be argued that a counter-offer was made by the first plaintiff to the defendant if the first plaintiff had specified a contract price to counter the defendant's offer. (See the case of *Stevenson, Jaques & Co. v. McLean* [1880] 5 QBD 3461. However in the present case the first plaintiff had not done so.

[14] A literal and clear reading of the defendant's letter of 21 January 1998 to the first plaintiff would indicate that it did not express or communicate an unequivocal intention to "revoke" the offer of 14 January 1998. It merely stated and reproduced as follows:

> Thank you for your request of meeting on the 19th January 1998 and notes APS's request for Transwater resubmitting an escalated quotation for this project. We have discussed this with our management team and regret to inform your company that we are unable to comply and hence wish to decline the offer.

(See p. 453 of appeal record (vol. 2))

This letter did not express that the defendant "were no longer interested in the project" as contended in the defendant's submissions before the learned trial judge. Further, it is noted that the defendant's amended defence did not plead that their letter dated 21 January 1998 revoked their earlier offer of 14 January 1998. Hence it is my view that the defendant cannot rely on that letter to claim that its offer of 14 January 1998 was purportedly "revoked". In my judgment considering the fact that defendant's offer of 14 January 1998 remained and that the first plaintiff had accepted the offer within the stipulated period, a valid and binding contract is formed between them. In any event, PW1 claimed that he had faxed the plaintiff's letter on 21 January 1998 before he received the defendant's letter of the same date. This is marked by the hand-written notation on the first plaintiff's letter of 21 January 1998. Had PW1 received the defendant's letter on 21 January 1998 first, it makes no sense for PW1 to send out the first plaintiff's letter of the same date and that on 22 January 1998, a letter enclosing the first plaintiff's cheque to the defendant. It is noted both the letters dated 21 January 1998 and 22 January 1998 did not indicate that the first plaintiff had received the defendant's letter of 21 January 1998 as alleged by the defendant.

[15] The defendant's own documents including an admission from DW1 would also confirm that the defendant had already partly performed the GMS works to evince that a legally binding contract had existed, the execution of which had commenced between the first plaintiff and defendant. On this point the court needs look no further than DW1's admission when he stated in cross-examination after being shown a project schedule (encl. 26) *inter alia* as follows:

Refer to Enclosure 26, page 146.

75. Q. This is your letter to the 1st plaintiff. I put it to you that the 3 terms i.e. 'kick off meeting', 'overall project (completion)', 'percent completed' are used only after a contract has been awarded and after works have commenced.

A. Yes.

(See p. 244 of appeal record (vol. 1))

By the above admission, the defendant agreed that the plaintiff had awarded the contract to the defendant and that the defendant had commenced works. The inevitable conclusion is that if the defendant had submitted a detail project schedule then the project must have been awarded. In the parties' minds the GMS works must have already been awarded to the defendant by the first plaintiff.

Whether The First Plaintiff Was In A Position To Sub-contract The Relevant GMS Contract To The Defendant

[16] The defendant submitted that the learned trial judge erred in law and in fact in failing to properly consider the evidence as to whether the first plaintiff was in a position to sub-contract the relevant GMS works to the defendant so as to institute and maintain the claim for breach of contract. It is not disputed that MAS had intended the GMS works to be contracted to the defendant. There is no dispute that negotiations had commenced and ended with the award of the GMS works to the defendant. In my view if the defendant had ultimately been awarded the GMS works by the first plaintiff as approved and intended by MAS, it matters not whether the first plaintiff was in a position to subcontract the works to the defendant.

[17] The defendant argued that the first plaintiff was allegedly not pre-qualified by MAS or that MAS' approval was not sought. To my mind that issue is not relevant in the present dispute between the plaintiffs and defendant. That may have been an issue between MAS and the plaintiffs but does not affect the binding contract between the first plaintiff and defendant. It is to be noted that MAS had in fact compensated the second plaintiff for

omitting the GRSW from it. The defendant is also found to have known that the contract for the GMS works would come from the first plaintiff. On this point DW1 for the defendant in cross-examination had *inter alia* stated as follows:

22. Q. The defendant states that they appear to be some confusion whether the defendant was negotiating with the 1st plaintiff or the 2nd plaintiff. When was the 1st time the 1st plaintiff wrote to the defendant.

A. Letter in page 116 of Enclosure 26 dated 5.12.97.

25. Q. I put it to you that there was no confusion as to whom the defendant was negotiating with after 5.12.97.

A. I agree.

26. Q. When the defendant was negotiating with the 2nd plaintiff, the defendant dealt with PW1?

A. Yes.

27. Q. Did the defendant also deal with PW1 when they were negotiating with the 1st plaintiff.

A. Yes.

28. Q. I put it to you that the defendant must have known that the 1st and 2nd plaintiff were related companies.

A. Yes.

29. Q. I put it to you that the defendant knew that the contract for the GMS works would come either from the 2nd or the 1st plaintiff.

A. Yes

[See pp. 234-235 of appeal record (vol. 1))

[18] It is my considered view that if MAS had in fact compensated the second plaintiff for omitting the GRSW then there is no issue as to whether MAS had pre-qualified the first plaintiff. Besides, it was the GMS works that were sub-contracted to the first plaintiff and not the entire GRSW. If the defendant knew that it would be the first plaintiff to award the GMS works then the chain of awarding the works was never broken and is legally sustainable.

Whether There Was An Inducement For Breach Of Contract Entitling The Second Plaintiff To Claim Against The Defendant

[19] The learned trial judge had rightly stated that to succeed in a claim of inducement of breach of contract five conditions must be satisfied. This is as set out in the case of *Greig v. Isole* [1978] 3 All ER 449 and accepted by our Federal Court in the case of *Loh Holdings Sdn. Bhd. v. Peglin Development Sdn. Bhd. & Anor.* [1984] 2 CLJ 88; [1984] 1 CLJ (Rep) 211. They are *inter alia* as follows:

(a) There must be direct or indirect interference, coupled with the use of unlawful means.

(b) The defendant must be shown to have knowledge of the relevant contract.

(c) The defendant must be shown to have the intent to interfere.

(d) The plaintiff must show that he has suffered special damages, that is, more than nominal damages.

(e) So far as it is necessary, the plaintiff must successfully rebut any defence based on justification which the defendant may put forward.

[20] To establish their claim, the plaintiffs have to prove first that MAS had breached its contract with the second plaintiff and that there existed elements of wrongful inducement or procurement when the GRSW were omitted from the second plaintiff and awarded to the defendant. It is not disputed that MAS was in breach of its contract with the second plaintiff. MAS had duly compensated the second plaintiff for omitting the GRSW from them.

[21] Based on the evidence adduced at the trial, I find that the learned High Court Judge was right in holding that the defendant had induced a breach of the alleged contract between the second plaintiff and MAS for the GRSW. The undisputed sequence of events in the present case point to the defendant and MAS meeting and negotiating covertly without the second plaintiff's knowledge for the GRSW even before the works were omitted from the second plaintiff and whilst the defendant was still talking

with the first plaintiff on the GMS works which formed part of the GRSW. The defendant even submitted its tender for the GRSW before it was omitted from the second plaintiff. Consequently such actions had caused the GRSW being omitted from the second plaintiff and with MAS awarding the entire GRSW to the defendant. The defendant's inducement had directly caused MAS to omit the GRSW from the second plaintiff and this had caused losses to the second plaintiff.

[22] It is my considered view that by entering into an agreement to do the GRSW with MAS, the defendant must have intended to cause MAS to breach its contract with the second plaintiff. The defendant in fact knew that if MAS awarded the entire GRSW to the defendant, MAS would have to omit the GRSW from the second plaintiff. The defendant's knowledge forms the unlawful element to infer "indirect interference". Malice is not required in the defendant's act. It does not matter that MAS might have been a willing party to the breach without the defendant's initiation. The "wrongful" element is established in the light of MAS' breach, which is an unlawful act. The defendant is also deemed to have acted unlawfully as it had induced or procured MAS to breach such contract without just cause or excuse. (See the case of *South Wales Miners' Federation & Others v. Glamorgan Coal Company Limited & Others* [1905] AC 239 (HL)).

[23] I find that the defendant afforded no proper justification for the wrongful inducement. Its allegation that MAS had a discretion to award or omit the GRSW is a total misconception and cannot stand as a justification. MAS already had a firm contract with the second plaintiff on the GRSW before it was awarded to the defendant. The allegation that the second plaintiff delayed the GRSW is unfounded. The delay if any did not in any event give the defendant a right to interfere. MAS in fact granted the second plaintiff an extension of time to complete the project, did not claim damages against them and paid compensation for actual works done and loss of profit.

[24] The defendant has also raised as a ground of appeal that the learned trial judge erred in law in not granting the defendant an opportunity to call a material witness from MAS in relation to the second plaintiff's claim of inducement for breach of contract. From the evidence recorded it is not a fair inference for the defendant

to state that the learned trial judge denied the defendant the opportunity to call its material witness. It was the defendant who was not ready to call and made available that so-called material witness at that stage of the hearing before the learned trial judge. On this point the learned trial judge had stated in his grounds of judgment as follows:

> At the final stage of the trial, the defendant informed this Court that a representative from MAS would be called. But when requested by this Court to call such witness no one from such organization came forward to present his evidence. The only explanation offered by the defence counsel for the non-availability of such a witness was that 'he (the defence counsel) just received instructions. This of course is appalling since the presence of such witness should have been arranged long before trial and not left to the last hour to ascertain whether such witness was necessary.

(See p. 38 of the appeal record)

[25] Based on the above observation made by the learned trial judge, I am of the view that he was justified in the circumstances of the case to refuse an adjournment. The learned trial judge cannot be faulted for this. It is the duty of counsel appearing for the respective parties to fully prepare their cases and assist the court in the smooth conduct of the trial without the unnecessary interruptions of adjournment.

Conclusion

[26] For the above stated reasons I would accordingly dismiss the defendant's appeal with costs and order that the deposit be paid to the plaintiffs on account of taxed costs.

[27] My learned brothers Mokhtar bin Hj. Sidin and Azmel Hj. Maamor JJCA had seen this judgment in the draft and have expressed their agreement.